



# COMMONWEALTH of VIRGINIA

## DEPARTMENT OF ENVIRONMENTAL QUALITY

### PIEDMONT REGIONAL OFFICE

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L. Preston Bryant, Jr.  
Secretary of Natural Resources

David K. Paylor  
Director

Gerard Seeley, Jr.  
Regional Director

## STATE WATER CONTROL BOARD ENFORCEMENT ACTION SPECIAL ORDER BY CONSENT ISSUED TO MR. JIM MATTHEWS, JR.

### **SECTION A: Purpose**

This is a Consent Special Order issued under the authority of Va. Code §§ 10.1-1185 and 62.1-44.15(8a) and (8d), between the State Water Control Board and Mr. Jim Matthews, Jr., for the purpose of resolving certain alleged violations of environmental law and regulations.

### **SECTION B: Definitions**

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. "Va. Code" means the Code of Virginia (1950), as amended.
2. "Board" means the State Water Control Board, a permanent citizens' board of the Commonwealth of Virginia as described in Va. Code §§ 10.1-1184 and 62.1-44.7.
3. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia as described in Va. Code § 10.1-1183.
4. "Director" means the Director of the Department of Environmental Quality.
5. "Order" means this document, also known as a Consent Special Order.
6. "Mr. Matthews" means Mr. Jim Matthews, Jr., sole owner of the Property located adjacent to Route 301, in Stony Creek, Virginia.

7. "PRO" means the Piedmont Regional Office of DEQ, located in Glen Allen, Virginia.
8. "Property" means property owned by Mr. Jim Matthews, Jr., located adjacent to Route 301, near the intersection of Rt. 95 and the Stony Creek exit in Sussex County, Virginia.
9. "Corps" means U.S. Army Corps of Engineers.

#### **SECTION C: Findings of Fact and Conclusions of Law**

1. Mr. Matthews, owns approximately 5.5 acres of property (Property) located adjacent to Route 301, near the intersection of Rt. 95 and the Stony Creek exit, in Sussex County, Virginia. The Property contains wetlands and an unnamed tributary to Stony Creek.
  2. On March 5, 2004, DEQ received a report from the Corps of unauthorized clearing and filling of approximately 2 acres of wetlands on Mr. Matthews' Property.
  3. On March 12, 2004, DEQ staff performed a site inspection of the Property. Staff observed that several acres of wetlands had been cleared and filled. Several large piles of dirt from 6 to 20 feet high, were located on the cleared Property. Staff also observed problems with erosion and sediment (E&S) controls at the site – silt fences were not properly installed at the site and additional E&S controls were needed. In addition, staff noted that Mr. Matthews had not applied to DEQ for a Storm Water Construction permit.
  4. On March 31, 2004, the Corps inspected the Property and determined that approximately 5.5 acres of wetlands had been mechanically cleared and that approximately 3 to 3.5 acres of the cleared wetlands had been filled. In April 2004 the Corps sent Mr. Matthews a Cease and Desist letter.
  5. On June 25, 2004, DEQ issued a Notice of Violation (NOV) to Mr. Matthews citing failure to obtain a permit for clearing and filling activities in wetlands on the Property.
  6. In response to the NOV, Mr. Matthews stated that the area filled on the Property was not a wetlands; that his consultant had previously delineated the Property and according to that delineation there was less than 1 acre of wetlands on the Property; and that he was submitting information to the Corps to reconsider their wetland determination of the Property. Neither the Corps nor DEQ received a wetland delineation of Mr. Matthews's Property.
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7. Instead of submitting a delineation to the Corps for confirmation, Mr. Matthews and his consultant met at the Property with the Corps and DEQ on November 18, 2004. The Corps had scheduled the site visit to verify wetland acreage impacted from the fill activity. The Corps required Mr. Matthews to have the Property delineated and submitted for confirmation.
8. After the November 18, 2004 site inspection and meeting, Mr. Matthews hired another consultant. The consultant delineated the property and submitted the wetland delineation to the Corps by letter dated September 28, 2005. In November 2005, DEQ received the Corps confirmation of wetland impacts at the Property. The Corps confirmed 2.8 acres of actual impacts – 1.83 acres was filled, and 0.97 acre was mechanically cleared.
9. Mr. Matthews and his attorney have met and corresponded with DEQ and Mr. Matthews has provided DEQ with his account of the facts.

#### **SECTION D: Agreement and Order**

Accordingly, the Board, by virtue of the authority granted it in Va. Code § 62.1-44.15(8a) and (8d), orders Mr. Matthews and Mr. Matthews agrees, to perform the actions described in Appendix A of this Order. In addition, the Board orders Mr. Matthews, and Mr. Matthews voluntarily agrees, to pay a civil charge of **\$15,000** within 30 days of the effective date of the Order in settlement of the violations cited in this Order. The payment shall note that it is being made pursuant to this order. Payment shall be by check, certified check, money order, or cashiers check payable to "Treasurer of Virginia" and sent to:

Receipts Control  
Department of Environmental Quality  
Post Office Box 1104  
Richmond, Virginia 23218

#### **SECTION E: Administrative Provisions**

1. The Board may modify, rewrite, or amend the Order with the consent of Mr. Matthews, for good cause shown by Mr. Matthews, or on its own motion after notice and opportunity to be heard.
  2. This Order only addresses and resolves those violations specifically identified herein, including those matters addressed in the NOV issued on June 25, 2004 as listed above in Section C. This Order shall not preclude the Board or the Director from taking any action authorized by law, including, but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility as may be authorized by law; and/or (3) taking subsequent action to enforce the terms of this Order. Nothing herein shall affect appropriate enforcement actions by other federal, state, or local regulatory authority, whether or not arising out of the same or similar facts.
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3. For purposes of this Order and subsequent actions with respect to this Order, Mr. Matthews admits the jurisdictional allegations, but does not admit the factual findings, and conclusions of law contained herein.
  4. Mr. Matthews consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
  5. Mr. Matthews declares he has received fair and due process under the Administrative Process Act, Va. Code §§ 2.2-4000 *et seq.*, and the State Water Control Law and he waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to enforce this Order.
  6. Failure by Mr. Matthews to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
  7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
  8. Mr. Matthews shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, hurricane, excessive wet weather, or other acts of God, war, strike, or such other occurrence. Mr. Matthews shall show that such circumstances were beyond his control and not due to a lack of good faith or diligence on his part. Mr. Matthews shall notify the DEQ Regional Director in writing when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:
    - a. the reasons for the delay or noncompliance;
    - b. the projected duration of any such delay or noncompliance;
    - c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
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- d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

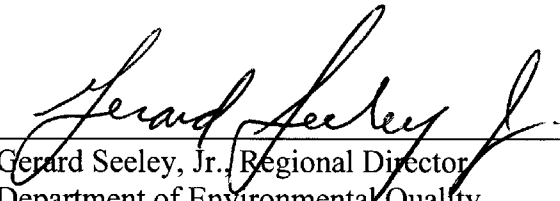
Failure to so notify the Regional Director within 5 days of learning of any condition above, which the parties intend to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

9. This Order is binding on the parties hereto, their successors in interest, designees assigns, jointly and severally.
10. This Order shall become effective upon execution by both the Director or his designee and Mr. Matthews. Notwithstanding the foregoing, Mr. Matthews agrees to be bound by any compliance date which precedes the effective date of this Order.
11. This Order shall continue in effect until:
- a. Mr. Matthews petitions the Director or his designee to terminate the Order after he has completed all of the requirements of the Order and the Director or his designee approves the termination of the Order; or
  - b. The Director or Board terminates the Order in his or its sole discretion upon 30 days notice to Mr. Matthews.

Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Mr. Matthews from his obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

12. By his signature below, Mr. Matthews voluntarily agrees to the issuance of this Order.

And it is so ORDERED this day of June 29, 2007.

  
Gerard Seeley, Jr., Regional Director  
Department of Environmental Quality

Mr. Matthews voluntarily agrees to the issuance of this Order.

By: James M Matthews Jr  
Date: 2/23/07

Commonwealth of Virginia

City/County of Sussex

The foregoing document was signed and acknowledged before me this 23 day of  
February, 2007, by James m matthews Jr, the owner.  
(name)

Jessica A. Roney  
Notary Public

My commission expires: 5-31-10

## APPENDIX A

Mr. Matthews shall:

1. Implement the approved wetland restoration plan (Plan) and schedule attached herein to Appendix A of this Order. **Any changes to the approved Plan or schedule shall not be implemented without advance notice to and approval by DEQ.**
2. Monitor the restored wetlands each year for at least **5 years**, in accordance with the approved Plan. Monitoring of the restored wetlands shall begin at the first complete growing season after construction (Year 1) and continue annually thereafter for an additional 4 years. Monitoring reports shall be prepared in accordance with the approved Plan and shall be submitted no later than **November 30<sup>th</sup>** of each monitoring year.
  - a. If the restored wetland areas fail to meet the specified success criteria during any monitoring year other than the final monitoring year, or if DEQ concludes, based on visual observations that the site is not progressing towards the overall restoration goals, the reasons for this failure shall be determined and a corrective action plan (including proposed actions, a schedule, and a monitoring plan) shall be submitted to DEQ for approval with or before that year's monitoring report. The DEQ-approved corrective action plan shall be implemented in accordance with the approved schedule.
  - b. If all success criteria have not been met by the last monitoring year, or if DEQ concludes, based on visual observations that the site has not met the overall restoration goals, submit an analysis of the reasons for restoration failure with that final year's monitoring report; and submit a corrective action plan and schedule to rectify the deficiencies. Upon approval, implement the corrective action plan and schedule. Annual monitoring shall continue until two sequential annual reports indicate that all success criteria have been satisfied and the restoration site has met the overall restoration goals. If the analysis indicates that corrective action cannot sufficiently address the reasons for site failure, submit with the analysis an alternate mitigation plan and schedule for the unsuccessfully restores wetlands. The proposed alternate mitigation plan and schedule shall be in accordance with the applicable provisions of § 62.1-44.15:5 E of the Code of Virginia and 9 VAC 25-210-115. Proof of purchase of mitigation bank credits or contribution to an in-lieu fee fund shall be submitted within 60 days of alternate mitigation plan approval by DEQ.
3. Pursuant to this Order, submit all documentation required by Appendix A to:

Cynthia Akers  
Department of Environmental Quality  
Piedmont Regional Office  
4949-A Cox Road  
Glen Allen, Virginia 23060

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## **RESTORATION PLAN FOR MATTHEWS SITE**

### **Sussex County, Virginia**

Elements of Restoration Plan. Mr. Matthews will:

1. Access the Property from US Route 301 for removal of fill material. An erosion and sediment control plan showing a construction entrance will be prepared and approved prior to commencing work.
2. Restore the preexisting ground elevation in the area underlain by hydric soils (1.83 acres) on which fill was placed. He will begin by excavating and removing fill material down to the A horizon (topsoil horizon) at the southern end of the filled Property, where the fill is only 2-3 feet deep. Using the topsoil horizon as the indicator of pre-fill grade, he will continue to remove all fill lying over this topsoil horizon. This fill material will be removed as quickly as possible, weather permitting (See schedule).
3. Remove the piles of stumps that were pushed up in the area of mechanized land-clearing. These stumps will be removed as quickly as possible, weather permitting (See schedule).
4. Restore a hydrophytic plant community in the areas of hydric soil (1.83 acres) and mechanized land clearing (0.97 acres). This restoration plan shall involve the planting of the plant species listed on the attached spreadsheet, 10 feet on center (436 stems per acre).
5. Conduct a Five-Year Monitoring Plan.

Planting on the site will be monitored for a period of 5 years from the date of installation. Monitoring shall begin after "leaf out" during the first complete growing season following installation and continue annually thereafter for an additional 4 years. Monitoring reports shall be prepared documenting the live stem density for trees, shrubs and herbaceous cover. Monitoring reports shall be submitted no later than November 30 of each monitoring year.

The restoration will be considered successful if stem counts for woody species (to include woody volunteer hydrophytic species) at 3 random sampling points meet or exceed a density of 436 stems per acre. The seeding will be considered successful if 80% of the sampling point area is vegetated with herbaceous species, based on visual observation. Sampling points will be 1/10 acre in size.

Photo-stations will be established along US Route 301 looking into the site. Photographs will be taken with sufficient overlap to ensure photographic coverage of the entire site from the photo-stations. Preconstruction photos will be taken for a baseline reference.



An abatement and control plan for undesirable plant species will be prepared and submitted for approval to the regulatory agencies if a problem is encountered which would inhibit the growth of the restoration plants.

An erosion and sedimentation control plan will be prepared for the restoration and fill disposal sites prior to commencement of earthwork activities.

6. Construction and Monitoring Schedule

March 2007 - install erosion and sediment control measures per approved plans at restoration site and disposal site

April 2007 to December 2007 - unless soil moisture conditions prevent work, remove all fill and stumps and restore site to pre-fill grade.

October 2007 to December 2007 - plant trees, shrubs and wetland seed mix on those parts of the site returned to pre-existing grade prior to October 2007 (Phase I planting)

January 2008 to September 2008 - remove remaining fill and stump piles (Phase II removal, if required)

Growing season 2008 - conduct field work for first monitoring report, and submit report for Phase I planting by November 30, 2008

October 2008 to December 2008 - plant trees, shrubs and wetland seed mix on remainder of the site (Phase II planting, if required)

Growing season 2009 - conduct field work for second monitoring report, and submit report by November 30, 2009

Growing season 2010 - conduct field work for third monitoring report, and submit report by November 30, 2010

Growing season 2011 - conduct field work for fourth monitoring report, and submit report by November 30, 2011

Growing season 2012 - conduct field work for fifth monitoring report, and submit Final Report (for Phase I planting, only, if Phase II planting was required) by November 30, 2012

Growing season 2013 - conduct field work for final monitoring report on Phase II planting area (if required), and submit final Monitoring Report for Phase II planting.

7. Final Assessment. It is understood that Mr. Matthews is obligated to restore the original grade of the Property and to restore woody vegetation capable of becoming a forested plant community at maturity. If the live stem count per acre is met at the end of the final five year monitoring period, Mr. Matthews is relieved of any further responsibility.

PLANT AND COMPOSITION SCHEDULE									
Matthews Restoration site - Sussex County, VA									
Overall Spacing (feet off center)	Quantity per acre	Frequency (%)	Species Quantity	Vegetation Strata/ Species Name	Common Name	Unit	Size	Spacing Type	Individual Spacing (ft.)
10	436			TREES					
		8	98	<i>Taxodium distichum</i>					35
		10	122	<i>Fraxinus pennsylvanica</i>					32
		10	122	<i>Quercus nigra</i>					32
		5	61	<i>Pinus taeda</i>					45
		10	122	<i>Quercus palustris</i>					32
			0						#DIV/0!
			0						#DIV/0!
			0						#DIV/0!
			0						#DIV/0!
			0						#DIV/0!
			0						#DIV/0!
			0						#DIV/0!
			0						#DIV/0!
		43	525	= Total					
10	436			MIDSTORY TREES					
		3	37	<i>Magnolia virginiana</i>					57
		2	24	<i>Cornus amomorum</i>					71
		2	24	<i>Betula nigra</i>					71
			0						#DIV/0!
			0						#DIV/0!
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			0						#DIV/0!
			0						#DIV/0!
			0						#DIV/0!
			0						#DIV/0!
		7	85	= Total					
10	436			SHRUBS AND VINES					
		10	122	<i>Clethra alnifolia</i>				Random	32
		10	122	<i>Ilex verticillata</i>				Random	32
		10	122	<i>Viburnum nudum</i>				Random	32
		10	122	<i>Leucothoe racemosa</i>				Random	32
			0					Random	#DIV/0!
			0					Random	#DIV/0!
			0					Random	#DIV/0!
			0					Random	#DIV/0!
			0					Random	#DIV/0!
			0					Random	#DIV/0!
		40	488	= Total				Random	#DIV/0!

PLANT AND COMPOSITION SCHEDULE									
Matthews Restoration site - Sussex County, VA									
Overall Spacing (feet off center)	Quantity per acre	Frequency (%)	Species Quantity	Vegetation Strata/ Species Name	Common Name	Unit	Size	Spacing Type	Individual Spacing (ft.)
N/A	40			HERBACEOUS SEED					
			0.0			LB-76% P.L.S.	N/A	Seed	N/A
			0.0			LB-76% P.L.S.	N/A	Seed	N/A
			0.0			LB-76% P.L.S.	N/A	Seed	N/A
			0.0			LB-76% P.L.S.	N/A	Seed	N/A
			0.0			LB-76% P.L.S.	N/A	Seed	N/A
			0.0			LB-76% P.L.S.	N/A	Seed	N/A
		0	0.0	= Total					
P.L.S.=Pure Live Seed									

[illegible]